

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Zajakowski Uhl	Team: Squad #10	CCRB Case #: 201903511	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/17/2019 12:50 AM	Location of Incident: 71st Street and 8th Avenue	Precinct: 68	18 Mo. SOL 7/17/2020	EO SOL 3/3/2021	
Date/Time CV Reported Tue, 04/02/2019 3:14 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Tue, 04/02/2019 3:14 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Justin Douglas	29998	956610	068 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eugene Marmontov	14146	965305	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Douglas	Abuse: Police Officer Justin Douglas frisked § 87(2)(b)	
B.POM Justin Douglas	Abuse: Police Officer Justin Douglas searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On March 5, 2019, § 87(2)(b) filed a complaint with the CCRB over the telephone. On April 2, 2019, § 87(2)(b) appeared at the CCRB and provided a sworn statement regarding eight separate incidents (**Board Review 1**). This complaint encompasses one of these incidents.

At approximately 12:50 a.m. on January 17, 2019, § 87(2)(b) was driving along 71st Street in the vicinity of 8th Avenue in Brooklyn when Police Officer Justin Douglas and Police Officer Eugene Marmontov of the 68th Precinct pulled him over for failing to stop at a stop sign.

PO Douglas and PO Marmontov approached § 87(2)(b)'s vehicle and informed him he had failed to stop at a stop sign on 72nd Street. PO Douglas then ordered § 87(2)(b) to step out of his vehicle because he smelled marijuana. § 87(2)(b) got out and PO Douglas frisked § 87(2)(b)'s chest, under his arms, around his waistline, and on the outside of his pants pockets (**Allegation A: Abuse of Authority: Frisk: § 87(2)(g)**) PO Douglas then directed § 87(2)(b) to the rear of the vehicle and proceeded to search the inside of the car. (**Allegation B: Abuse of Authority: Vehicle search: § 87(2)(g)**) PO Marmontov then issued § 87(2)(b) summons #§ 87(2)(b) (**Board Review 2**) for failing to stop at a stop sign.

The investigation obtained BWC from PO Marmontov (**Board Review 3**) and PO Douglas (**Board Review 4**). PO Douglas' BWC starts recording approximately 16 minutes after PO Marmontov's BWC, after PO Douglas frisked § 87(2)(b) and searched his vehicle § 87(4-b), § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Justin Douglas frisked § 87(2)(b)
Allegation B – Abuse of Authority: Police Officer Justin Douglas searched the vehicle in which § 87(2)(b) was an occupant.

The BWC from PO Marmatov (**Board Review 3**) opens with PO Douglas and PO Marmontov shining flashlights into the windows of § 87(2)(b)'s vehicle. At 00:17 § 87(2)(b) exits the vehicle and at 00:31 PO Douglas pats down § 87(2)(b). At 00:59 § 87(2)(b) states that “the car does not smell like weed.” From 1:06 to 7:54 PO Douglas searches § 87(2)(b)'s vehicle. PO Douglas and PO Marmontov then return to their vehicle to retrieve a summons. At 18:53 PO Douglas states that “the car smells like weed” and PO Marmatov responds “absolutely.” At 19:28 PO Marmontov gives § 87(2)(b) the summons and § 87(2)(b) asks PO Marmontov and PO Douglas for their names and badge numbers, which they provide.

The BWC from PO Douglas (**Board Review 4**) begins after he already conducted the frisk and vehicle search (OMN), while he is in the vehicle with PO Marmontov writing § 87(2)(b) a summons. At 2:43, PO Douglas makes the same statement seen in PO Marmontov's BWC about § 87(2)(b)'s vehicle smelling like “weed.”

§ 87(2)(b) provided a statement to CCRB intake on March 5, 2019 that encompassed several different incidences. § 87(2)(b) provided a sworn statement at the CCRB on April 2, 2019. (**Board Review 1**). The statements were generally consistent, except that § 87(2)(b) mistakenly identified the subject officer in this case as PO Azeem Chatha of the 68th Precinct.

In his sworn statement, § 87(2)(b) stated that he was driving his Toyota RAV4 down 71st Street in Brooklyn to make a food delivery for his job when he was pulled over by an NYPD SUV. He stated

that PO Douglas and PO Marmontov approached the vehicle and told § 87(2)(b) he had not stopped at a stop sign on 72nd Street. PO Douglas then told § 87(2)(b) to step out of the vehicle because he smelled marijuana. PO Douglas then searched the vehicle, including § 87(2)(b)'s backpack which was inside the car. He then frisked § 87(2)(b)'s chest, under his arms, around his waistline, and on the outside of his pants pockets. PO Douglas then asked § 87(2)(b) for his license and registration. After going back to their car for approximately ten minutes, PO Marmontov issued § 87(2)(b) a summons for failing to stop at a stop sign. § 87(2)(b) told the investigation that his car did not smell like marijuana, and he has not smoked marijuana for decades.

PO Douglas was interviewed at the CCRB on November 21, 2019 (**Board Review 5**). PO Douglas stated he had no independent recollection of the incident. He did not remember smelling marijuana. When shown PO Marmontov's BWC, he identified himself as the officer frisking § 87(2)(b) and searching his vehicle and assumed he did so because of the smell of marijuana, but had no independent recollection of the incident.

PO Marmontov was interviewed at the CCRB on October 30, 2019 (**Board Review 6**). He stated that he and PO Douglas pulled § 87(2)(b) over and approached his vehicle. PO Douglas asked § 87(2)(b) to step out of the vehicle. PO Marmontov then walked to the back of the vehicle and watched § 87(2)(b) while PO Douglas searched the vehicle. PO Marmontov did not remember any communication between PO Douglas and himself about smelling marijuana in § 87(2)(b)'s car, nor was he very experienced with the smell of marijuana. PO Marmontov did smell a "fresh burning grass smell," but was not positive it was marijuana. He remembered that PO Douglas searched § 87(2)(b)'s vehicle and frisked his person but stated that PO Douglas never explained to him why he frisked § 87(2)(b). PO Marmontov noted in his memo book entry from January 17, 2019 that § 87(2)(b)'s car "did smell like marijuana." (**Board Review 7**)

It was undisputed that PO Douglas searched § 87(2)(b)'s vehicle and frisked his person, and that the BWC from both officers showed them agreeing that the car smelled like marijuana. § 87(2)(g)

§ 87(2)(g)

The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants (People v Chestnut, 43 AD2d 260 [3d Dept 1974]) (**Board Review 8**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
- PO Douglas has been a member of service for five years and has been a subject in four CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
[Redacted]

Mediation, Civil and Criminal Histories

- On May 14, 2019 this case was sent to mediation and on July 17, 2019 the case was returned to investigation § 87(2)(g)
[Redacted]
- A request for any Notice of Claim regarding this incident has been submitted to the New York City Comptroller's Officer, and the results will be added to the case file upon receipt.
- § 87(2)(b)
[Redacted]
[Redacted]
[Redacted]

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

CCRB Case # 201903511

Reviewer: _____
Signature Print Title & Name Date